
PREAMBLE

❖ Text of the Preamble

The undersigned Plenipotentiaries of the Governments represented at the Diplomatic Conference held at Geneva from April 21 to August 12, 1949, for the purpose of revising the Convention concluded at Geneva on July 27, 1929, relative to the Treatment of Prisoners of War, have agreed as follows:

❖ Reservations or declarations

None

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A. Introduction

- 132 The preamble to the Third Convention is very brief. It consists merely of an introductory formula that links the title of the Convention with its operative parts, but does not state, as is usual with preambles, the motivations behind the operative text. Apart from a reference to the governments represented at the 1949 Diplomatic Conference, it notes only that the Conference’s purpose was to revise the 1929 Geneva Convention on Prisoners of War. A commentary on this rather perfunctory text might therefore seem unnecessary. However, the Conference discussed several more detailed draft preambles. While these were ultimately not adopted, important elements of them have found expression in the dispositive provisions of the Geneva Conventions, justifying a discussion here of this introductory sentence and its historical background.
- 133 Comparable introductory sentences were adopted as preambles to the First, Second and Fourth Geneva Conventions.¹ In contrast, the operative texts of the

¹ See the commentaries on the preambles to the First, Second and Fourth Conventions.

1977 Additional Protocols are preceded by more detailed preambles elaborating on the background, object and purpose of these instruments.²

B. Historical background

- 134 With the exception of the 1864 Geneva Convention, the conventions preceding the 1949 Geneva Conventions contained more elaborate preambles. These not only listed the States concerned and specified the preceding conventions that were revised or adapted by the respective new convention, but they also briefly set out the motivation underlying the adoption of the new convention. For example, the preamble to the 1929 Geneva Convention on Prisoners of War, which is the direct predecessor of the Third Convention, stated:

Recognizing that, in the extreme event of a war, it will be the duty of every Power, to mitigate as far as possible, the inevitable rigours thereof and to alleviate the condition of prisoners of war;

Being desirous of developing the principles which have inspired the international conventions of The Hague, in particular the Convention concerning the Laws and Customs of War and the Regulations thereunto annexed,

Have resolved to conclude a Convention for that purpose ...³

- 135 The drafts submitted by the ICRC to the 17th International Conference of the Red Cross in Stockholm, convened in 1948 for the revision of the 1929 Geneva Conventions on the Wounded and Sick and on Prisoners of War, for the revision of the 1907 Hague Convention (X) and for the creation of a new convention on the protection of civilians in time of war, contained no preambles, as the ICRC preferred to leave the task of drawing these up to the subsequent Diplomatic Conference.⁴
- 136 At the French delegation's suggestion, however, the Stockholm Conference adopted a draft preamble for the new civilians convention,⁵ prompting the

² See the commentaries on the preambles to Additional Protocols I and II.

³ See also the preambles to the 1899 Hague Convention (III), the 1907 Hague Convention (IV) and the 1929 Geneva Convention on the Wounded and Sick. The preambles to the 1899 and 1907 Hague Conventions note that their wording was 'inspired by the desire to diminish the evils of war, as far as military requirements permit'. In the authentic French version of these conventions, the preambles note in identical terms: 'inspirée par le désir de diminuer les maux de la guerre, autant que les nécessités militaires le permettent ...'.

⁴ Since preambles are not part of the dispositive treaty text, it is said that ideally they are negotiated only after the main treaty text has been determined; see Aust, p. 368, and Pazarcı, p. 2, para. 1.

⁵ This draft preamble stated:

The High Contracting Parties, conscious of their obligation to come to an agreement in order to protect civilian populations from the horrors of war, undertake to respect the principles of human rights which constitute the safeguard of civilisation and, in particular, to apply, at any time and in all places, the rules given hereunder:

- (1) Individuals shall be protected against any violence to their life and limb.
- (2) The taking of hostages is prohibited.

ICRC to suggest the following preamble for inclusion in all four draft conventions, setting forth 'the main principle underlying all the humanitarian Conventions':

Respect for the personality and dignity of human beings constitutes a universal principle which is binding even in the absence of any contractual undertaking.

Such a principle demands that, in time of war, all those not actively engaged in the hostilities and all those placed *hors de combat* by reason of sickness, wounds, capture, or any other circumstance, shall be given due respect and have protection from the effects of war, and that those among them who are in suffering shall be succoured and tended without distinction of race, nationality, religious belief, political opinion or any other quality.

The High Contracting Parties solemnly affirm their intention to adhere to this principle. They will ensure its application, by the terms of the present Convention, to the wounded and sick of armed forces in the field, and pledge themselves to respect, and at all times to ensure respect for, the said Convention.⁶

- 137 The 1949 Diplomatic Conference addressed the question of preambles in the three committees established to discuss the four draft conventions.⁷ Within these committees, this question was intensely debated. While there was no fundamental objection to the inclusion of preambles in the four Conventions or to the proposed drafts, agreement on their precise content proved difficult to achieve. In particular, the Holy See's proposal 'that there should be some reference to the Deity in each Preamble' gave rise to debate.⁸ Other proposals underlined the importance of a reference to the prohibition and punishment by States Parties of certain violations of the Conventions.⁹
- 138 Ultimately, considering it preferable to have no preamble rather than a preamble on which unanimous agreement could not be reached,¹⁰ the three

(3) Executions may be carried out only if prior judgment has been passed by a regularly constituted court, furnished with the judicial safeguards that civilised peoples recognize to be indispensable.

(4) Torture of any kind is strictly prohibited.

These rules, which constitute the basis of universal human law, shall be respected without prejudice to the special stipulations provided for in the present Convention in favour of protected persons. See Draft Conventions adopted by the 1948 Stockholm Conference, p. 113.

⁶ *ICRC Remarks and Proposals on the 1948 Stockholm Draft*, pp. 8, 26 and 36. For the draft new civilians convention, the ICRC also suggested an additional alternative text; see *ibid.* pp. 66–67.

⁷ See *Final Record of the Diplomatic Conference of Geneva of 1949*, Vol. II-A, p. 33. Committee I was tasked with the discussion of the draft revised 1929 Geneva Convention on the Wounded and Sick and of the draft revised 1907 Hague Convention (X), Committee II with the discussion of the draft revised 1929 Geneva Convention on Prisoners of War, and Committee III with the discussion of the draft new convention on the protection of civilians in time of war.

⁸ See *Final Record of the Diplomatic Conference of Geneva of 1949*, Vol. II-A, pp. 112–114.

⁹ See *ibid.* p. 165.

¹⁰ During the debate, for example, the ICRC had 'ventured to recommend that the Preamble to be adopted should be an element of union, embody[ing] at least the one principle upon which all could agree – that of respect for suffering humanity. The purpose of the Conference was to agree upon the provisions in the humanitarian conventions, and not upon the philosophical or

committees decided against the adoption of any of the proposed preambles.¹¹

- 139 As a result, no substantive preambles to the four 1949 Geneva Conventions were adopted. Important elements of the drafts that had been discussed at the Diplomatic Conference, however, found entry in the operative parts of the Conventions, in particular the fundamental obligation of humane treatment in common Article 3 governing non-international armed conflicts.¹²
- 140 If the imperative of humane treatment applies as a minimum in non-international armed conflicts, that minimum must *a fortiori* also be applicable in international armed conflicts, even though it was not repeated in the Convention's preamble. It thus represents a guiding principle common to all the Geneva Conventions.

C. Discussion

- 141 Although not a prerequisite under international law, treaties are often introduced by a preamble. They note the States or State representatives that took part in the conclusion of the treaty or refer, more generally, to the States party to the treaty; and traditionally, they also set out the motivations for the adoption of the treaty.¹³ While preambles are not part of the operative clauses of a treaty,¹⁴ they are part of a treaty's context and can thus be consulted for guidance on its interpretation, in particular as they may give an indication of a treaty's object and purpose.¹⁵
- 142 The introductory sentence adopted as the preamble to the Third Convention is very brief. Apart from a reference to the 'undersigned Plenipotentiaries of the Governments represented at the Diplomatic Conference held at Geneva from April 21 to August 12, 1949', it notes only that the Conference was held 'for the purpose of revising the Convention concluded at Geneva on July 27, 1929, relative to the Treatment of Prisoners of War'.¹⁶

metaphysical motives which inspired them and which might be different for different nations'; see *ibid.* p. 166.

¹¹ First Committee III and then Committee II decided not to adopt preambles; see *ibid.* pp. 691–697, 777–782, 807 and 813 (Committee III) and pp. 322–323, 366–367, 393–398 and 561 (Committee II). In view of this, Committee I also decided against the inclusion of a preamble in the two draft conventions it had been mandated to discuss; see *ibid.* pp. 181–182. Previously, Committee I had adopted a draft preamble text elaborated by the Working Party set up for that purpose; see *ibid.* pp. 164–168.

¹² For details, see the commentary on Article 3, section B.

¹³ See Aust, pp. 366–367; Mbengue, para. 1; and Pazarci, p. 3, paras 5–6.

¹⁴ For a discussion, see Mbengue, paras 11–14.

¹⁵ On the interpretive function of preambles, see Vienna Convention on the Law of Treaties (1969), Article 31(1)–(2); Gardiner, pp. 192, 194, fn. 162, and 196–197; and Mbengue, paras 3–5.

¹⁶ For information on the historical background of the Third Convention, see Introduction, section A.2.

- 143 The relationship between the Third Convention and the 1929 Geneva Convention on Prisoners of War referred to in the preamble is elaborated in Article 134, which provides that the Third Convention ‘replaces’ this earlier Convention ‘in relations between the High Contracting Parties’.¹⁷ Article 135 also provides that the Third Convention ‘shall be complementary’ to Chapter II of the Regulations annexed to the 1899 and 1907 Hague Conventions for those Powers bound by them.¹⁸
- 144 The preamble provides no further reasons for the adoption of the Third Convention, rendering it of limited use in determining the Convention’s object and purpose. One may, however, deduce its object and purpose by considering the preamble to the 1929 Convention. Thus, the object and purpose of the 1949 Convention would also be ‘to mitigate as far as possible, the inevitable rigours [of a war] and to alleviate the condition of prisoners of war’.¹⁹

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¹⁷ See the commentary on Article 134, section C.

¹⁸ See the commentary on Article 135, section C.

¹⁹ Geneva Convention on Prisoners of War (1929), Preamble.

